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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1990

CASE NO 90-660

LYNN JAY FERRIN, PETITIONER

v.

HERMAN DI MARTINI, RESPONDENT

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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QUESTION PRESENTED

Whether the Court of Appeals erred by fairly applying well- settled and uniformly recognized law in its fact-specific inquiry into the question of whether qualified immunity is present?

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TABLE OF AUTHORITIES

Constitution, statutes, and rules:

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The Law Office of Lawrence J. Semenza, on behalf of Herman Di Martini, opposes the Petition for Writ of Certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit in this case.

OPINIONS BELOW

The opinion of the court of appeals (Petitioner's App. 1a-15a) is reported at 889 F.2d 922. The amended opinion and order of the court of appeal on the denial of rehearing (Petitioner's App. 16a-19a) is reported at 906 F.2d 465. The opinion of the district court (Petitioner's App. 20a-21a) is unreported.

JURISDICTION

The jurisdiction of this Court is invoked pursuant to 28 U.S.C. 1245 (1) and governed by Supreme Court Rule 10.

RULE INVOLVED

Supreme Court Rule 10. Considerations Governing Review on Writ of Certiorari

> .1. A review on writ of certiorari is not a matter of right, but of judicial discretion. A petition for a writ of certiorari will be granted only when there are special and important reasons therefor. The following, while neither controlling-

nor fully measuring the Court's discretion, indicate the character of reasons that will be considered:
(a) When a United States court of appeals has rendered a decision in conflict with the decision of another United States court of appeals on the same matter; or has decided a federal question in a way in conflict with a state court of last resort; or has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's power of supervision.
(b) When a state court of last resort has decided a federal question in a way that conflicts with the decision of another state court of last or of a United States court of appeals.
(c) When a state court or a United States court of appeals has decided an important question of federal law which has not been, but should be, settled by this Court, or has decided a federal question in a way that conflicts with applicable decision of this Court.

STATEMENT

A.

INTRODUCTION

The sole substantive issue

presented by Petitioner, Lynn J. Ferrin ("Ferrin") is whether the United States Court of Appeals for the Ninth Circuit ("the Ninth Circuit") erred in determining that no qualified immunity attached to the conduct of Ferrin at issue in the Second Amended Complaint of Respondent, Herman Louis Di Martini ("Di Martini").

The Ninth Circuit applied well-settled law, as uniformly recognized throughout the United States Circuit Courts of Appeal ("courts of appeal") and, in its fact-specific inquiry, fairly determined that no qualified immunity attached to the conduct of Ferrin. As such, the standards for granting a petition for writ of certiorari as enunciated in Supreme Court Rule 10 have not and cannot be met. Supreme Court

Rule 10 requires that a petition for writ of certiorari be granted only when there are "special and important reasons therefor." (emphasis added.) Supreme Court Rule 10.1 (a) and (c) are the subparagraphs applicable to this petition. 10.1 (a) provides that

> (a) When a United States court of appeals has rendered a decision in conflict with the decision of another United States court of appeals on the same matter; or has decided a federal question in a way in conflict with a state court of last resort; or has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's power of supervision.

and 10.1 (c) provides that

> (c) When a state court or a United States court of appeals has decided an important question of federal law which has not been, but should be, settled by this Court, or has decided a federal question in a way that conflicts with applicable decision of this Court.

No special or important reasons exist to grant this Petitioner; nor are the character of reasons listed in 10.1 (a) or 10.1 (c) present.

B.

MATERIAL FACTS ARE

GENUINELY AT ISSUE

Ferrin brought a Motion for Summary Judgment on the issue of qualified immunity. The sole focus in determination of that Motion is whether "clearly established" law constitutes a basis for the qualified immunity defense to fail. The following statement of disputed material fact alone, without more,[1] is determinative on the issue of

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[1] In addition, there is a legitimate argument that Ferrin attempted to suborn perjury. This argument, in its simplest form, goes as follows: (1) Di Martini testified before a Grand Jury under oath. (2) Both Di Martini and Ferrin were aware of the content of

"clearly established" law:

Ferrin contacted the employer of Di Martini without legitimate purpose and caused the termination of Di Martini.

C.

APPLICATION OF THE FACTS

TO CLEARLY ESTABLISHED LAW

SUPPORTS A BIVENS CAUSE OF ACTION

The conduct of Ferrin constitutes an unreasonable interference with private employment actionable under "clearly established"law. See Respondent's

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that testimony. (3) Ferrin made strong suggestions that Di Martini change that testimony. (4) Assuming arguendo that the testimony is truthful (which assumption must be made for purposes of the motion for summary judgment as seen in a light most favorable to Di Martini), the conduct of Ferrin is an attempt to suborn perjury. While Di Martini believes that this is a compelling and cogent syllogism, this argument is not necessary to support the denial of Summary Judgment by the Ninth Circuit Court.

Argument, supra, p. 7. The cause of action of Di Martini arises pursuant to Federal common law as delineated in Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics, 403 U.S. 388 (1971).

The factual statements of the declaration of Ferrin in support of the Motion for Summary Judgment and the factual statements of the declaration of Di Martini in Opposition to the Motion for Summary Judgment make clear that material issues of genuine fact are present. Special Agent Ferrin was involved in the FBI's investigation of suspected criminal activity of casinos in Las Vegas, Nevada. Ferrin had interviewed Di Martini while Di Martini was employed at the Stardust Hotel and Casino as part of this investigation.

Declaration of Ferrin App. pp. 1-6. After Di Martini began employment at the Sands Hotel in Las Vegas, Ferrin approached Di Martini while he was on duty and asked to speak to him. Ferrin stated that he wanted the help of Di Martini in the case that was coming up soon against the Stardust Hotel. Ferrin wanted to know what was going on at the Stardust. Ferrin indicated that he knew that Di Martini ran a straight shift at the Stardust and that Ferrin wanted information about what others did there. Di Martini advised Ferrin that Di Martini did not know what Ferrin was talking about. At the conclusion of this conversation, Ferrin advised Di Martini that the FBI was going to get the Stardust if it was the last thing they did and that they would not stop until

they did so. Ferrin further told Di Martini that Ferrin believed that Di Martini did not want to help them. Ferrin advised Di Martini that "we know you have a rich relative back home," after having previously indicated that Ferrin would "see someone" (presumably the casino manager) if Di Martini would not talk with him. Declaration of Di Martini App. pp. 7-11. Eight days later Di Martini was discharged from the Sands Hotel by casino manager, Mr. DuCharme. Mr. DuCharme refused to give a reason for the termination but confirmed that Ferrin had met with Mr. DuCharme after the interview noted above and that Ferrin also went higher in the Sands organization. Mr. DuCharme and Di Martini agreed that they both knew the reason Di Martini was being terminated.

Declaration of Di Martini App. pp. 7-11.

This evidence, viewed in a light most favorable to Di Martini, leads to the ineluctable conclusion that a genuine issue of material fact exists. See Respondent's Argument, supra p. 12.

The Ninth Circuit denied the Motion for Summary Judgment because of the presence of genuine issues of fact as viewed in a light most favorable to Di Martini. The Ninth Circuit applied settled and uniformly recognized law to a unique set of facts to properly find a genuine dispute as to a material issue of fact.[2]

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[2] There is a clear and important distinction between a motion for summary judgment on the issue of qualified immunity and a motion for summary judgment on the merits after discovery is completed. While the court's inquiry must be fact-specific on the issue of qualified immunity, (see Anderson, supra, p. 7), the available evidence

SUMMARY OF ARGUMENT

A. UNDER THE FACTS PRESENT HERE, THE LAW IS "CLEARLY ESTABLISHED" AND THE QUALIFIED IMMUNITY DEFENSE MUST FAIL.

B. SUMMARY JUDGMENT WILL NOT LIE IF THE EVIDENCE IS SUCH THAT A REASONABLE

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must be weighed on its own terms, not viewed in terms of the amount of evidence that would typically be presented in deciding a motion for summary judgment on the merits after full-blown discovery. The viewing of fact-specific evidence in determining a motion for summary judgment on the issue of qualified immunity should not be confused with the weighing of evidence in determining a motion for summary judgment on the merits after discovery. That the evidence presented on a qualified immunity motion is not the quantity of evidence normally needed to survive a motion for summary judgment after completed discovery is

not determinative of the issue of whether a genuine material factual dispute exists for purposes of determining qualified immunity.

JURY COULD RETURN A VERDICT FOR THE NON-MOVING PARTY.

C. THE DECISION OF THE NINTH CIRCUIT SIMPLY APPLIES WELL- SETTLED, UNIFORMLY RECOGNIZED LAW TO THE PARTICULAR FACTS OF THIS CASE TO FAIRLY CONCLUDE THAT SUMMARY JUDGMENT ON THE ISSUE OF QUALIFIED IMMUNITY SHOULD BE DENIED.

ARGUMENT

A.

THE MOTION FOR SUMMARY JUDGMENT WAS PROPERLY DENIED

I.

THE APPLICABLE GOVERNING LAW IS SETTLED, CLEAR AND UNIFORMLY RECOGNIZED

In order to show the paucity of Ferrin's arguments, it is necessary to delineate the substantive law relating to Ferrin's motion for summary judgment on

the issue of qualified immunity. The relevant question in regard to the issue of qualified immunity is one which is "objective, albeit fact-specific . . ." Anderson v. Creighton, 483 U.S. 635, 641.

The issue on Ferrin's motion for summary judgment is whether a "reasonable officer could have believed [his conduct] to be lawful, in light of clearly established law . . ." Anderson v. Creighton, 483 U.S. 635, 641 (1987).

Since Ferrin has not claimed (and cannot claim) extraordinary circumstances were present such that he neither knew nor should he have known of the relevant legal standard, then, if "the law was clearly established, the immunity defense must fail." A reasonably competent public official "should know the law governing his conduct." Harlow v.

Fitzgerald, 457 U.S. 800, 819 (1982).

Federal officials have a qualified immunity shielding them from civil damage liability if their actions "could reasonably have been thought to be consistent with the rights they are alleged to have violated." Anderson v. Creighton, 483 U.S. 635, 638 (1987).

Qualified immunity protects "all but the plainly incompetent and those who knowingly violate the law." Malley v. Briggs, 475 U.S. 335, 344-345 (1986) cited with approval in Anderson, 483 U.S. at 638.

The concrete legal test for determining whether qualified immunity attaches is whether the official action has "objective legal reasonableness." Harlow v. Fitzgerald, 457 U.S. 800, 819 (1982) cited with approval in Anderson,

483 U.S. at 639.

"The contours of the right must be sufficiently clear that a reasonable official will understand that what he is doing violates that right." Anderson v. Creighton, 483 U.S. 635, 640 (1987).

The official action in question need not have been found unlawful on a prior occasion. Mitchell v. Forsyth, 472 U.S. 511, 535 (1985) cited with approval in Anderson, 483 U.S. at 640. The unlawfulness of the official action need only be apparent in light of existing law. See Anderson v. Creighton, 483 U.S. 635, 640 (1987) (citing cases).

The objective inquiry into whether qualified immunity attaches is often termed an inquiry whether "clearly established rights" were violated. The standard enunciated by this Court in

Anderson is settled, clear and uniformly recognized throughout all the courts of appeal.

II.

FERRIN VIOLATED A CLEARLY ESTABLISHED RIGHT OF DI MARTINI

In 1915, this court found that at-will employees have a right to be free from unreasonable governmental interference.

"The fact that employment is at the will of the parties respectfully does not make it one at the will of others." Truax v. Raich, 239 U.S. 33, 38 (1915).

In 1959, this court again found that "the right to hold specific private employment and to follow a chosen profession free from unreasonable governmental interference 'comes within the 'liberty' and 'property' concepts of

the Fifth Amendment." (emphasis added.) Greene v. McElroy, 360 U.S. 474, 492 (1959) (citing cases).

The Eighth Circuit in Chernin v. Lyng, 874 F.2d 501 (8th Cir. 1989) expressly mentions a critical and simple distinction in the context of unreasonable governmental inference.

> The difficulty with the USDA's present reliance on cases like Roth is that it confuses the constitutional principal (namely, that the Due Process Clause is not an independent source of substantive rights) with a specific proposition about what those rights are (namely, that employees at-will have no enforceable rights concerning their employment against anybody). The latter proposition misstates both Roth and the common law of employment. While a employee like Chernin may not have any claim to continued employment enforceable against his employer, he does have a right enforceable in law against third parties who unlawfully interfere with the employment relation. 874 F.2d at 504-5.

In Meritt v. Mackey, 827 F.2d 1368

(9th Cir. 1987), a case involving both state and Federal defendants, the Ninth Circuit confuses the unassailable principle mentioned in Chernin as cited above. The Ninth Circuit perpetuates this confusion in its order amending its opinion in this case when it states that the district court will need to determine whether a state law entitlement exists. See Petitioner's App. 19a. Compare the order amending opinion (Petitioner's App. 16a - 19a) with the initial opinion (Petitioner's appendix p. 12a starting with the word "however" second to the last word at the bottom continuing through p. 15a ending with the first full paragraph.)

The plain error doctrine enunciated in Supreme Court Rule 24.1 (a) permits correction of this patent mistake

of law by the Ninth Circuit. Di Martini respectfully requests that Supreme Court Rule 24.1 (a) be utilized to negate the unnecessary requirement imposed by the Ninth Circuit that a state law entitlement be shown.

Without regard to the issue of state law entitlement mentioned above, the notion that the Constitution protects at-will employees from unreasonable governmental interference was established, well-settled and not subject to serious debate when Ferrin contacted the employer of Di Martini. To contact an employer without any legitimate purpose is per se an unreasonable governmental interference. Only the plainly incompetent or those who knowingly violate the law would attempt to gainsay the proposition that freedom

from unreasonable governmental interference in employment is not a clearly established right. We live in a society where unreasonable police intervention in our private lives cannot be suffered.

Official abrogation of a clearly established right is remedied by bringing a Bivens actions, as part of Federal common law, not by resort to a deprivation hearing or any administrative process. While the Ninth Circuit has erroneously added the additional element of proving a state law entitlement, no court of appeals has failed to find an employee's right to be free from unreasonable governmental interference in at-will employment.

The fact-specific analysis performed by the Ninth Circuit is simply

an inquiry whether Ferrin's conduct constitutes an objectively unreasonable interference. Since the evidence filed both supporting and rebutting Ferrin's Motion for Summary Judgment creates a genuine issue of fact concerning whether Ferrin's conduct in contacting the employer of Di Martini served any legitimate purpose, the conclusion of the Ninth Circuit that Ferrin's conduct was objectively unreasonable and unlawful based upon existing law is required by force of entelechy.

B.

WELL-SETTLED AND INDISPUTABLE SUMMARY JUDGMENT STANDARDS REQUIRE THE CONCLUSION REACHED BY THE NINTH CIRCUIT

Summary judgment will not lie if

the dispute of material fact is genuine; "that is if the evidence is such that a reasonable jury could return a verdict for the non-moving party." See Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986).

> [I]t is true that the issue of material fact required by Rule 56 (c) to be present to entitle a party to proceed to trial is not required to be resolved conclusively in the favor of the party asserting its existence; rather, all that is required is that sufficient evidence supporting the claimed actual dispute be shown to require a judge or jury to resolve the parties' differing versions of the truth at trial.

Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 249 (1986) (citing First National Bank of Arizona v. Cities Service, Co., 391 U.S. 253 (1968).

It is axiomatic that for purposes of summary judgment "that inferences to be drawn from the underlying facts . . . must be viewed in the light most

favorable to the party opposing the motion." Matsushita Electrical Industrial, Co. v. Zenith Radio, 475 U.S. 574, 587 (1986) citing United States v. Diebold, Inc., 369 U.S. 644, 655 (1962).

It follows from settled principles in regard to motions for summary judgment that if "the factual context renders respondents' claim implausible - if the claim is one that simply makes no . . . sense - respondents must come forward with more persuasive evidence to support their claim that would otherwise be necessary." Matsushita Electrical Industrial v. Zenith Radio, 475 U. S. 574, 587 (1986). In this case, nothing in the "factual context" renders Di Martini's claims implausible. Therefore, Di Martini need not present any additional evidence. As such, no

"relaxed" standard has been imposed by the Ninth Circuit. The evidence presented by Di Martini, without more, is sufficient, when viewed in a light most favorable to Di Martini, to support the denial of summary judgment.

All inferences must be drawn in favor of Di Martini. Furthermore, only evidence is to be considered. Self serving statements in affidavits constitute mere window dressing. A Federal officials' "subjective beliefs about [his conduct] are irrelevant." Anderson v. Creighton, 483 U.S. 635, 641 (1987).

The affidavits of both Ferrin and Di Martini make clear that a reasonable jury could find that Ferrin's conduct was an unreasonable governmental interference with employment which caused his

termination. Inferences about causation for purposes of denying summary judgment need not be raised by way of direct evidence. Inferences of causation are ones upon which reasonable men can differ and as such summary judgment is inappropriate in that context. See, e.g., Richoux v. Armstrong Cork, Corp., 777 F.2d 296, 297 (5th Cir. 1985).

> To avoid summary judgment, the Plaintiff is not required to 'establish' anything, [it] need merely produce evidence to raise disputed issues of material fact. 777 F.2d at 217.

Ferrin has raised facts that could reasonably support an inference of causation. The discussion with Mr. DuCharme in the context of Ferrin's previous visit with Di Martini is alone sufficient to support that inference. Ferrin's bald assertion that he visited the employer of Di Martini to find out

who recommended Di Martini is not sufficient to prohibit the jury from reasonably determining that Ferrin's contact with the employer of Di Martini was an unreasonable governmental interference that caused his termination.

The Ninth Circuit created no new law in adumbrating the contours of analysis for denying a motion for summary judgment in the fact-specific circumstances of this case. No relaxed standard was used. The Ninth Circuit simply delineates that, given the evidence of the declarations, all available reasonable inferences must be resolved in favor of Di Martini for purposes of Ferrin's motion for summary judgment.[3] The Ninth Circuit creates no

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[3] The wisdom of this decision is apparent if Mr. DuCharme's sworn deposition testimony is considered. Mr.

DuCharme's deposition was taken after Ferrin's motion was decided, in a state court proceeding not subject to the stay herein. Mr. DuCharme, in answering the questions of Mr. Semenza testified as follows:

> Either five, seven, ten days, the time I'm not sure, it was a short time after Mr. Dimartini[sic] was hired, I was visited by FBI agent Lynn Ferrin who asked to speak to me. Q. Did you know Mr. Ferrin prior to that date? A. No, sir. Whereupon seeing the business card I asked him to come into the office.
>
> And I asked him what I could do for him. Whereupon he explained to me or he asked me, he said do you know who you have working down there. And I said down where?
>
> He said, the person you just hired recently, and he mentioned Herman Dimartini[sic].
>
> And I said, well, the audition went pretty well, and all the other checks we try to make on prospective employees went well.
>
> And then Mr. Ferrin came out with words to the

effect that, well, I think you ought to know, I want to give you some information that I believe you ought to know.

I said, all right.

And he proceeded to tell me that Herman was employed at the Stardust. And of course I knew that because I had reviewed the job application.

He went into a few of the goings on at the Stardust at that particular time. Correct me if I'm wrong, I think the State and obviously the FBI were involved in doing, checking credit scams or some kind of scams over there.

And that Mr. Ferrin said that although we are pretty sure that Herman was not involved in any wrong doings, that more than likely he had knowledge of wrongdoing and wasn't cooperating with the FBI investigation.

Q. Did Mr. Ferrin indicate to you how Mr. Dimartini[sic] was not cooperating with their investigation, the manner?

A. He either intimated or specifically told me

and I'm sorry, I don't remember which, that they believe he observed certain transactions, and even though he wasn't involved he saw what was going on and knew who was involved and would not, would not . . .

Q. Provide them with information?

A. Thank you. I was going to say, somebody help me.

Mr. Ferrin also made one other statement that caused me some concern and that was that again words to the effect that Mr. Dimartini's[sic] wife was the daughter of I believe a gentlemen by the name of Joseph Aiuppa, excuse me, daughter, cousin, something to that effect.

Q. A relative, close relative?

A. Thank you. And that it was sort of a, you know, I thought you ought to know.

So whereupon I asked him, who is Joseph Aiuppa?

Q. Did Mr. Ferrin explain to you who he believed Mr. Aiuppa was?

new law.

The evidence presented by declaration, without more, shows that a genuine issue of material fact is present on the issues of both whether Ferrin had any legitimate reason to contact the employer of Di Martini and whether Ferrin caused the termination of Di Martini. The standards applied by the Ninth Circuit are wholly consistent with well-

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> A. Words to the effect that Mr. Aiuppa's allegedly one of the hierarchy of the Chicago mob.
> Q. What else occurred at the meeting?
> A. That was it. To the best of my recollection that was it.

The pages of Mr. Ducharme's deposition are attached as App. pp. 12-18.

settled and existing law in regard to summary judgment.

C.

THE RECORD AMPLY SUPPORTS THE CONCLUSION OF THE NINTH CIRCUIT THAT FERRIN VIOLATED A CLEARLY ESTABLISHED RIGHT BASED ON APPLICATION OF EXISTING, CLEAR LAW TO THE UNIQUE FACTS OF THIS CASE

All courts analyze qualified immunity consistently. The issue is that of a "clearly established" right. That other cases applying the same standard have reached different results in analyzing and discussing different fact-specific circumstances does not support Ferrin's proffered argument that the Ninth Circuit has created new law or has caused a lack of uniformity among the

courts of appeal.

There is a clear inference that Ferrin had simply no legitimate interest in contacting the employer of Di Martini. The employer of Di Martini was not involved in the investigation of another casino. Ferrin's statement by declaration, that he contacted the employer of Di Martini to "ask who recommended" Di Martini, is pretextual. This subterfuge, as a matter of law, does not rise to the level of a legitimate basis for furthering an investigation into the illegal activities of another casino sufficient to support summary judgment. For purposes of the motion for summary judgment, the Ninth Circuit, after a fact-specific, objective analysis, correctly concluded that Ferrin's conduct is in violation of a

clearly established law inasmuch as it is unreasonable governmental interference. The Ninth Circuit analysis does not rely upon any relaxed standard but simply relies upon a time-honored standards that are normally applied in the context of summary judgment. The affidavits of Di Martini and Ferrin viewed in a light favorable to Di Martini do not support any claim that Ferrin's interference is reasonable. Since, for purposes of summary judgment, unreasonable interference is fairly debatable, Di Martini must prevail. Other cases, applying the same governing law to functionally different fact specific situations and thereby requiring different analysis and discussion, simply cannot support Ferrin's argument that the Ninth Circuit has created new law or that

there is some inconsistency among the courts of appeal.

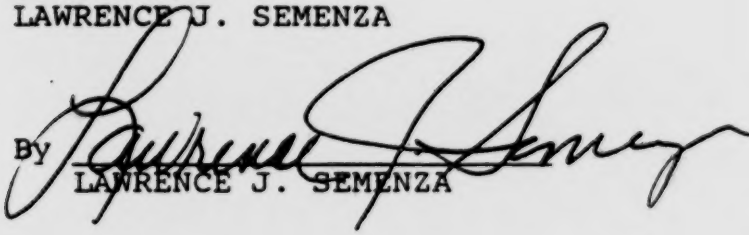
CONCLUSION

Since there are no special or important reasons for granting the petition for a writ of certiorari, since the Ninth Circuit has not rendered a decision in conflict with a decision of another court of appeals on the same matter, since the Ninth Circuit has not departed from the accepted and usual course of judicial proceedings or sanctioned such departure by a lower court, and since the Ninth Circuit has

not decided a question of Federal law which has not been settled by this court, the petition for writ of certiorari must be denied.

Respectfully submitted,

LAW OFFICES OF
LAWRENCE J. SEMENZA

By 
LAWRENCE J. SEMENZA

FEBRUARY 1991.

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1990

CASE NO 90-660

LYNN JAY FERRIN, PETITIONER

v.

HERMAN DI MARTINI, RESPONDENT

RESPONDENT'S APPENDIX

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

* * *

HERMAN LOUIS DI MARTINI,	)	CV-S-85-001-LDG
Plaintiff,	)	
v.	)	
LYNN JAY FERRIN, Special Agent, FEDERAL BUREAU OF INVESTIGATION,	)	
Defendant.	)	

DECLARATION OF SPECIAL AGENT
LYNN JAY FERRIN

I, Lynn Jay Ferrin, declare under penalty of perjury that the following is true and correct to the best of my knowledge.

1. I am presently employed as a Special Agent (SA) with the Federal Bureau of Investigation (FBI). I am presently assigned to a squad of SAs which investigates organized crime

violations of Federal law. I have been employed as a SA for more than 13 years.

2. In connection with my duties as a SA, I was assigned in 1980 to an investigation of alleged criminal activity at various casinos in Las Vegas, Nevada. One of the casinos under investigation was the Stardust Hotel and Casino.

3. While conducting the investigation at the Stardust Hotel and Casino, I became aware that the plaintiff, Herman Louis Di Martini, was employed at the Stardust Hotel and Casino in the Baccarat card room. Because the investigation indicated that Mr. Di Martini had knowledge concerning the alleged criminal activity occurring at the Stardust Hotel and Casino, he was subpoenaed to testify before a Federal Grand Jury that was

hearing testimony about the case.

4. In January 1984, an indictment was returned against Trans-Sterling, Inc., alleging that between May 1979 and 1981, millions of dollars have been "skimmed out" of the Stardust Hotel and Casino.

5. In November 1984, I learned that Mr. Di Martini was employed in the Baccarat pit of the Sands Hotel in Las Vegas, Nevada.

6. On November 19, 1984, while in the Sands Hotel and Casino, I interviewed Mr. Di Martini while he was taking a break from his employment activities in the Baccarat pit at the Sands Hotel in Las Vegas, Nevada.

7. I questioned Mr. Di Martini about his knowledge of "skimming" activities at the Stardust Hotel and Casino, and specifically, the alleged skimming

activities of various individuals who have been indicted in connection with those activities. When Mr. Di Martini professed no knowledge of the skimming activities, I told him that it was my opinion that he did have such knowledge, and it would be of some assistance in the prosecution of the case against the indicated individuals. When Mr. Di Martini once again denied having any such knowledge, I immediately terminated the interview with him.

8. At no time during the interview did I threaten, harass, or intimated Mr. Di Martini into cooperating in the investigation. At no time did I ask him to perjure himself or change any previously sworn testimony he had given to the Grand Jury.

9. After, I interviewed Mr. Di

Martini, I contacted Mr. Doug Ducharme, the Casino manager at the Sands Hotel to ask him who had recommended Mr. Di Martini be hired by the Sands Hotel. Mr Ducharme advised me that Mr. Di Martini had been recommended for hiring by the Sands' Baccarat pit manager. Mr. Ducharme asked me if Mr. Di Martini was in any trouble, and I advised him that although Mr. Di Martini was not personally involved in the "skimming" activities at the Stardust Hotel and Casino while he was employed there, it was believed that he had information which would assist the FBI in its investigation of such activities. I then concluded the interview with Mr. Ducharme.

10. At no time did I request that Mr. Ducharme terminate Mr. Di Martini from

employment with the Sands Hotel. At no time did I ever ask any other management personnel from the Sands Hotel, the Stardust Hotel and Casino, or any other casino or hotel to terminate Mr. Di Martini from employment with those businesses, respectively. I have never made any threats or demands to any hotels or casinos to either terminate Mr. Di Martini or refuse to hire him. I have not prevented him in any way from gaining employment with any casinos or hotels in the Las Vegas area.

I declare under penalty that the foregoing is true and correct, to the best of my knowledge.

Executed this 18th day of May, 1987.

/S/

LYNN JAY FERRIN
Special Agent
Federal Bureau of Investigation
Las Vegas, Nevada

LAW OFFICES OF
LAWRENCE J. SEMENZA
560 E. Plumb Lane
P. O. Box 11125
Reno, NV 89510

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

* * *

HERMAN LOUIS DI MARTINI,	)	CV-S-85-001-LDG
Plaintiff,	)	
v.	)	DECLARATION OF HERMAN LOUIS DI MARTINI
LYNN JAY FERRIN, Special Agent, FEDERAL BUREAU OF INVESTIGATION,	)	
Defendant.	)	

I, HERMAN LOUIS DI MARTINI, declare under penalty of perjury that the following is true and correct to the best of my knowledge.

1. I began employment with the Sands Hotel on November 14, 1984. On November 19, 1984, a man approached the Baccarat table and advised me he would like to

talk to me. I asked him to sit down but he wanted to go elsewhere to talk and I was unable to leave the table until I had a break. I advised him it would be about five minutes before I had a break.

2. The individual who wanted to talk with me gave his business card to Mr. Berry who was one of my supervisors. When I left the able for a break, Mr. Berry handed me the business card which identified LYNN FERRIN as an FBI agent. At that time I remembered MR. FERRIN from his frequenting the Stardust Hotel when I worked there.

3. On my break I spoke with MR. FERRIN. He indicated he wanted to talk to me and that if I didn't talk with him he would go see "someone." I assumed he meant the casino manager. MR. FERRIN stated that he would like my help in the

case that was coming up soon against the Stardust Hotel. He stated he wanted to know what was going on at the Stardust. I advised him he did not know what he was talking about. MR. FERRIN told me that he knew that I ran a straight shift at the Stardust but that he wasted information and for me to tell what Sachs and others did there. He wanted me to tell him about a "beef" that I had with Sachs and others. I told him I did not know what he was talking about. He additionally wanted to know shy they fired Willy Williams. I advised him I did not know what he was talking about, that I thought Willie Williams had retired.

4. MR. FERRIN advised at the conclusion of our discussion that the FBI was going to get the individuals at the

Stardust if it is the last thing they do and they will not stop until they do. MR. FERRIN told me that he guessed that I did not want to help them, and he advised me that if I changed my mind I should give him a call. MR. FERRIN also made a gesture with both hands raised up with his fingers rubbing together and said we know you have a rich relative back home.

5. On November 27, 1984, during my regular work shift, Mr. Lazzaro advised me that Mr. DuCharme wanted to see me in his office. Mr. DuCharme is the casino manager.

6. When I went to Mr. DuCharme's office, he said right out that he was terminating my employment at the Sands Hotel. I asked if he would give me a reason and he replied "no" that he was

just terminating my employment. I then asked if it had anything to do with the Stardust Hotel since MR. FERRIN had interviewed a few days prior. Mr. DuCharme said "yes" he knew that Ferrin had interviewed me and that he had also been in to see him and then he went higher in the organization than him.

7. I told Mr. DuCharme that I knew why I was being fired then. Mr. DuCharme said that I knew the reason and he terminated my employment.

I declare under penalty that the foregoing is true and correct to the best of my knowledge.

DATED this 16 day of June, 1987.

/s/
HERMAN LOUIS DI MARTINI

DISTRICT COURT

CLARK COUNTY, NEVADA

HERMAN LOUIS DiMARTINI and RITA DiMARTINI	)	
Plaintiffs,	)	
vs.	)	Case No. A245524
HUGHES PROPERTIES, INC., licensee dba SANDS HOTEL & CASINO	)	
Defendants.	)	

DEPOSITION OF DOUGLAS DU CHARME
Taken on Tuesday, September 8, 1987
At 1:30 o'clock p.m.
At 411 East Bonneville Avenue
Las Vegas, Nevada

Reported by: Barbara Shavalier, C.S.R. #84

definition. But probationary discharge is--probation period is designed to take a look at he employee, see how they blend in with the other employees, with the supervisors, take a look at their customer relations, all the things you can't see on an audition.

Q. And do I take it in Mr. Dimartini's case that for some reason in this probationary period of time he did not pass the probationary criteria?

A. I guess you could say that for extenuating circumstances.

Q. Can you describe for me, please, during his probationary time how he did not come up to the standard which your required.

A. Well, let me ask you this: May I start from a particular point and explain to you what happened?

Q. Certainly.

A. Thank you.

Either five, seven, ten days, the time I'm not sure, it was a short time after Mr. Dimartini was hired, I was visited by FBI agent Lynn Ferrin who asked to speak to me.

Q. Did you know Mr. Ferrin prior to that date?

A. No, sir. Whereupon seeing the business card I asked him to come into the office.

And I asked him what I could do for him. Whereupon he explained to me or he asked me, he said do you know who you have working down there. And I said down where?

He said, the person you just hired recently, and he mentioned Herman Dimartini.

And I said, well, the audition went pretty well, and all the other checks we try to make on prospective employees went well.

And then Mr. Ferrin came out with words to the effect that, well, I think you ought to know, I want to give you some information that I believe you ought to know.

I said, all right.

And he proceeded to tell me that Herman was employed at the Stardust. And of course I knew that because I had reviewed the job application.

He went into a few of the goings on at the Stardust at that particular time. Correct me if I'm wrong, I think the State and obviously the FBI were involved in doing, checking credit scams or some kind of scams over there.

And that Mr. Ferrin said that although we are pretty sure that Herman was not involved in any wrong doings, that more than likely he had knowledge of wrongdoing and wasn't cooperating with the FBI investigation.

Q. Did Mr. Ferrin indicate to you how Mr. Dimartini was not cooperating with their investigation, the manner?

A. He either intimated or specifically told me and I'm sorry, I don't remember which, that they believe he observed certain transactions, and even though he wasn't involved he saw what was going on and knew who was involved and would not, would not . . .

Q. Provide them with information?

A. Thank you. I was going to say, somebody help me.

Mr. Ferrin also made one other

statement that caused me some concern and that was that again words to the effect that Mr. Dimartini's wife was the daughter of I believe a gentlemen by the name of Joseph Aiuppa, excuse me, daughter, cousin, something to that effect.

Q. A relative, close relative?

A. Thank you. And that it was sort of a, you know, I thought you ought to know.

So whereupon I asked him, who is Joseph Aiuppa?

Q. Did Mr. Ferrin explain to you who he believed Mr. Aiuppa was?

A. Words to the effect that Mr. Aiuppa's allegedly one of the hierarchy of the Chicago mob.

Q. What else occurred at the meeting?

A. That was it. To the best of my recollection that was it.

After he left the--

Q. Let me stop you.

Where did the meeting take place?

A. My office.

Q. And do you recall the approximate date of the meeting?

A. Fir, six, seven days after we employed Herman.

Q. And was anyone else present besides yourself and Mr. Ferrin?

A. No.

Q. Had you ever spoken with the FBI on a previous occasion while you were employed as the director of gaming operations at the Sands Hotel?

A. Regarding Herman?